

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EDWARD KOSTEN, SUZANNE KOSTEN and
LUKE KOSTEN,

Plaintiffs,

Case No 1:16-cv-06666

v.

GEORGE KOSTEN, JOHN REEVES,
US SAUCES, LLC, an Illinois limited liability
company, and UNION NATIONAL BANK, an
Illinois banking corporation,

Judge:

Defendants.

GARDEN ROW FOODS, Inc., an Illinois
Corporation

Nominal Defendant

**VERIFIED COMPLAINT FOR COPYRIGHT INFRINGEMENT
AND A SHAREHOLDER DERIVATIVE ACTION**

The Plaintiffs, by and through their attorney Maurice James Salem of the Law Offices of Salem & Associates, seek compensatory and statutory damages, as well as injunctive relief for copyright infringement and Plaintiffs Edward and Suzanne Kosten, in their capacity as shareholders of Garden Row Foods, Inc., (“Garden”), bring this Verified Shareholder Derivative Complaint, pursuant to *Fed. R. Civ. P.*, Rule 23.1, on behalf of Garden and against its officers and directors seeking to remedy Defendants’ violation of law, including breaches of fiduciary duties related to events that began December 12, 2014, and continued until the present day that have caused substantial financial losses to Garden and other damages, including, but not limited to, loss of all of the company’s assets, its reputation, goodwill and established customer base, and for their Complaint state the following:

NATURE OF THE ACTION

1. Plaintiffs bring this action on the basis of unauthorized copying and distribution of Plaintiffs' registered copyright works in connection to Defendants' retail sales, where the Defendants reap profit from the unauthorized use of said copyright works. In addition, Plaintiffs bring this action on basis of a related derivative action where the Defendants wrongfully transferred all assets from Garden Row Foods, Inc., to their new company US Sauces LLC. The Union National Bank colluded with Defendants to transfer assets to the new company by wrongfully allowing the transfer of collateral assets to the new company and keeping Plaintiffs' loan, which is a mortgage on their home, as unpaid although payments made to the Bank should have applied to payoff Plaintiff's loan #9, rather than Garden's business loans.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. §§ 1331 and 1338 because it arises under the Copyright Act, 17 U.S.C. § 101 et seq. This Court has supplemental subject matter jurisdiction over state law claim under 28 U.S.C. § 1367. Venue is proper in this Court under 28 U.S.C. §§ 1391 & 1400, and it is Plaintiffs' and Defendants' domicile, as well as the corporate Defendants' state of incorporation and their principal place of business.

THE PARTIES

3. Plaintiff, Edward Kosten, is a Shareholder of Garden Row Foods, Inc., with 30% of the shares, and owner of the registered copyright material that was infringed upon.

4. Plaintiff, Suzanne Kosten, is the wife of Plaintiff Edward Kosten and is a Shareholder of Garden Row Foods, Inc., with 10% of the shares.

5. Plaintiff, Luke Kosten, is the owner of the copyright material in this action that was infringed upon.

6. Defendant George Kosten was the President of Garden Row Foods, Inc., and who is currently a Managing Member of Defendant US Sauces LLC and who used the copyrighted material without authorization

7. Defendant John Reeves was the Vice President of Garden Row Foods, Inc., and he is currently a Managing Member of Defendant US Sauces LLC.

8. Defendant US Sauces LLC, 411 Stone Drive, St. Charles, Illinois 60174, is an Illinois limited liability company that had wrongfully transferred to itself assets from Garden Row Foods, Inc. and used the subject copyrighted material without authorization

9. Defendant Union National Bank, an Illinois banking corporation, conspired to assisted Defendants to transfer all assets from Garden to US Sauces LLC.

10. The Nominal Defendant, Garden Row Foods, Inc., is an Illinois corporation where the President and Vice President were Defendant George Kosten and John Reeves, respectively.

STATEMENT OF FACTS

A. Copyright

11. Plaintiffs Edward Kosten and Suzanne Kosten are husband and wife who own 40% of shares in the company Garden Row Foods Inc., (“Garden”) and Defendants George Kosten and John Reeves own the other 60%. The company Garden manufactures and distributes certain food sauces.

12. Plaintiffs Edward Kosten and his son, Luke Kosten, created certain copyright art designs that they allowed the company Garden to use on its products. **Exhibit A** hereto is a picture of the art design and copyrights registration numbers.

13. Although Plaintiffs Edward Kosten and his son, Luke Kosten, gave authorization for Garden to use their art, they never gave authorization to Defendants George Kosten, John Reeves or their new company, US Sauces LLC (“Sauces”), to use their art.

14. **Exhibit B** are pictures of Plaintiffs copyright art being used by said Defendants on their products for sale. This is an unauthorized use Plaintiffs Edward and Luke Kosten’s registered copyright art.

B. Derivative Action

15. On December 12, 2014, Defendants George Kosten and John Reeves, in their capacity as President and Vice President, closed down Garden on basis that the business failed and that it had no more assets.

16. When Garden was shut down, Plaintiffs Edward and Suzanne Kosten’s 40% shares became valueless, in that, they were worth \$0.0 and they received \$0.0 upon the shutting down of the company.

17. On December 14, 2015, Plaintiffs’ counsel served a “Demand Letter by minority shareholders for an accounting of Garden Row Foods, inc.,” but no response was received. Despite numerous attempts among family members to resolve this dispute, Defendants refused to cooperate.

18. At the same time Garden was shut down, Defendants George and John Reeves established a new company in the same building that manufactures and distributes

the same products that Garden produces, which is food sauces. The new company is Defendant US Sauces LLC.

19. Upon information and belief, US Sauces LLC, is owned and operated by Defendants George Kosten and John Reeves.

20. Also, upon information and belief Garden's assets and customers were transferred to US Sauces LLC, without receiving any compensation.

21. Defendant Union National Bank (the Bank), in collusion with Defendants George Kosten and John Reeves, enabled the wrongful transfer of assets from Garden to the new company US Sauces LLC by permitting the collateral on certain business loans that Plaintiff Edward Kosten and his wife had taken, to be transferred. In exchange, the Bank received assets from Garden that was not counted against said loans.

22. The Defendant Bank had received funds from the sale of certain assets belonging to Garden, which would have repaid the business loan that Edward Kosten and his wife had taken (and which they had placed their home as collateral). However, despite receiving said funds as repayment, the Bank breached the loan agreement by maintaining that the loan was not paid off. **Exhibit C** is the pertinent loan #9 agreement, which is the business loan Plaintiffs took for the company Garden. The company was to have paid off the loan, but it failed to do so.

23. Defendant George Kosten admitted to a potential investor, Steve Cooper, that he "worked out a deal" with the Bank's vice president, Jay Deihs, where the Bank will allow Garden to transfer assets and collateral from Garden to a new company, US Sauces LLC, in exchange Garden will turnover some of its assets to the Bank. **Exhibit D** shows some of the assets that were sold and the proceeds went to the Bank.

24. In a negotiation among Defendant George Kosten, the Bank's agent Jay Deihs and the potential investor, Steve Cooper, the investor objected to the amount of assets that the Bank will receive in the transfer of assets from Garden to US Sauces LLC. The Bank refused to take less assets from Garden, in order to leave US Sauces LLC with more assets from Garden, which resulted in the investor refusing to invest and become a Member in the LLC.

FIRST CAUSE OF ACTION
Copyright Infringement – 17 U.S.C. § 501
against Defendants George Kosten, John Reeves and US Sauces LLC

25. Plaintiffs repeat paragraphs 1 through 24 as stated herein.

26. Plaintiffs Edward Kosten and his son, Luke Kosten, own the registered copyrights contained in **Exhibit A** and they have exclusively licensed those copyrights ("Plaintiffs' Copyrights").

27. The Defendants have infringed on Plaintiffs' Copyrights, including, but not limited to, the registered copyrights in the articles listed on **Exhibit A** by making unauthorized copies of them for use and distribution on their products for sale and profits.

28. Defendants have copied and used the copyright material to sell their products, **Exhibit B**, and to profit, without any authorization from Plaintiffs.

29. **WHEREFORE**, Plaintiffs respectfully request the following relief:

A. Permanently enjoining defendants, their agents, servants, employees, attorneys, and all those acting in concert with them, from infringing the Plaintiffs' Copyrights;

B. Awarding plaintiffs their damages or defendants' profits, or alterna-

tively, at plaintiffs' election, statutory damages, as a result of defendants' infringement of the Plaintiffs' Copyrights;

C. Awarding plaintiffs their costs and reasonable attorneys' fees in this action; and

D. Awarding plaintiffs such other and further relief as the Court deems just and proper.

SECOND CAUSE OF ACTION
Against Defendants George Kosten and John Reeves for Breach of their Fiduciary Duty in Connection with their Management of Garden

30. Plaintiffs repeat paragraphs 1 through 24 as stated herein.

31. The Defendant George Kosten, as the President of Garden Row Foods, Inc., and Defendant John Reeves, as Vice President, had a fiduciary duty of reasonable care, loyalty and good faith to ensure the ongoing operation of Garden, to secure the assets of the company and to properly apply its income.

32. Each of these Defendants breached their fiduciary duties of care, loyalty and good faith by transferring ownership of assets from Garden to a new company, Defendant US Sauces, LLC, without receiving any compensation, and by selling certain company assets, where the proceeds went to the Defendant Bank, without applying the payments towards Plaintiffs' loan #9. Additionally, Defendants failed to keep Garden operational in order to have US Sauces take its existing business, with its existing corporate customers.

33. As a result of Defendants' breach of their fiduciary duty, Garden lost all of its assets and its business was shutdown, where the value of the shares held by the shareholders was reduced to zero dollars (\$0.0).

34. **WHEREFORE**, Plaintiffs respectfully request the following relief:

A. Awarding Plaintiffs compensatory damages for lost shareholders' interest in company assets and future income;

B. Awarding Plaintiffs punitive damages to deter these Defendants and others similarly situated from repeating such actions;

C. Awarding plaintiffs their costs and reasonable attorneys' fees in this action; and

D. Awarding plaintiffs such other and further relief as the Court deems just and proper.

THIRD CAUSE OF ACTION
Against All Defendants for Unjust Enrichment

35. Plaintiffs repeat paragraphs 1 through 24 as stated herein.

36. The Defendant George Kosten, as the President of Garden Row Foods, Inc., and Defendant John Reeves, as Vice President, had possession of all the assets of the company and its income.

37. Each of these Defendants transferred ownership of assets from Garden to a new company that they own, Defendant US Sauces, LLC, with the help of the Defendant Bank and without Garden receiving any compensation. They sold certain company assets, where the proceeds went to the Defendant Bank, without applying the payments towards Plaintiffs' loan #9. Additionally, Defendants failed to keep Garden operational in order to have US Sauces take its existing business, with its existing corporate customers.

38. As a result of Defendants' actions, the Defendants were unjustly enriched with Garden's assets and its business, as well as the value of the shares held by the shareholders.

39. **WHEREFORE**, Plaintiffs respectfully pray for the following relief:

A. Awarding Plaintiffs compensatory damages for lost shareholders' interest in company assets and future income;

B. Awarding plaintiffs their costs and reasonable attorneys' fees in this action; and

C. Awarding plaintiffs such other and further relief as the Court deems just and proper.

FOURTH CAUSE OF ACTION
Against All Defendants for Conversion

40. Plaintiffs repeat paragraphs 1 through 24 as stated herein.

41. The Defendant George Kosten, as the President of Garden Row Foods, Inc., and Defendant John Reeves, as Vice President, had possession of all the assets of the company and its income.

42. Each of these Defendants transferred ownership of assets from Garden to a new company that they own, Defendant US Sauces, LLC, without receiving any compensation. They sold certain company assets, where the proceeds went to the Defendant Bank, without applying the payments towards Plaintiffs' loan #9. Additionally, Defendants failed to keep Garden operational in order to have US Sauces take its existing business, with its existing corporate customers.

43. Defendants' actions constituted a conversion of Garden's assets and its business, as well as the value of the shares held by the shareholders. Plaintiffs' December 15, 2015, written demand for the return of said assets was rejected.

44. **WHEREFORE**, Plaintiffs respectfully request the following relief:

A. Awarding Plaintiffs compensatory damages for lost shareholders' interest in company assets and future income;

B. Awarding Plaintiffs punitive damages to deter these Defendants and others similarly situated from repeating such actions;

C. Awarding plaintiffs their costs and reasonable attorneys' fees in this action; and

D. Awarding plaintiffs such other and further relief as the Court deems just and proper.

FIFTH CAUSE OF ACTION
Against all Defendants for Conspiracy

45. Plaintiffs repeat paragraphs 1 through 24 as stated herein.

46. The Defendant George Kosten, as the President of Garden Row Foods, Inc., and Defendant John Reeves, as Vice President, had possession of all the assets of the company and its income.

47. Each of these Defendants and the Defendant Bank entered into an agreement to commit conspiracy by wrongfully transferring the ownership of assets from Garden to a new company that they own, Defendant US Sauces, LLC, without receiving any compensation. They agreed to sell certain company assets, where the proceeds went to the Defendant Bank, without applying the payments towards Plaintiffs' loan #9. Additionally, Defendants agreed not to keep Garden operational in order to have US Sauces take its existing business, with its existing corporate customers.

48. Defendants' actions constituted a conspiracy to breach their fiduciary duty, unjust enrichment and for conversion and to breach of loan agreement, in order to acquire

Garden's assets and its business, as well as the value of the shares held by the shareholders.

49. **WHEREFORE**, Plaintiffs respectfully request the following relief:

A. Awarding Plaintiffs compensatory damages for lost shareholders' interest in company assets and future income;

B. Awarding Plaintiffs punitive damages to deter these Defendants and others similarly situated from repeating such actions;

C. Awarding plaintiffs their costs and reasonable attorneys' fees in this action; and

D. Awarding plaintiffs such other and further relief as the Court deems just and proper.

SIXTH CAUSE OF ACTION
BREACH OF A LOAN AGREEMENT AGAINST UNION NATIONAL BANK

50. Plaintiffs repeat paragraphs 1 through 24 as stated herein.

51. The Defendant George Kosten, as the President of Garden Row Foods, Inc., and Defendant John Reeves, as Vice President, had possession of all the assets of the company and its income.

52. Each of these Defendants and the Defendant Bank entered into an agreement to wrongfully transfer the ownership of assets from Garden to a new company that they own, Defendant US Sauces, LLC, without receiving any compensation. They agreed to sell certain company assets, where the proceeds went to the Defendant Bank, without applying the payments towards Plaintiffs' loan #9.

53. The Bank breached the attached loan agreement, loan #9, by failing to apply the payments it received from the sale of assets belonging to Garden, toward loan #9.

54. **WHEREFORE**, Plaintiffs respectfully request the following relief:

- A. Awarding Plaintiffs compensatory damages against the Defendant Bank and for damaging Plaintiffs' credit rating;
- B. Awarding plaintiffs their costs and reasonable attorneys' fees in this action; and
- C. Awarding plaintiffs such other and further relief as the Court deems just and proper.

JURY TRIAL IS DEMANDED

Dated: June 27, 2016,

Respectfully submitted,

/s/Maurice James Salem,
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Declaration by Attorney Salem

I, Maurice James Salem, am the attorney of record in this case and I hereby testify under the penalties of perjury that the facts stated in this Complaint are true and complete, except those facts alleged upon information and those facts that I believe to be true.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 26th day of June, 2016.

/s/Maurice James Salem